STATE OF MICHIGAN

COURT OF APPEALS

MARY BOYCE,

Plaintiff-Appellee,

v

PREMIER SALONS,

Defendant-Appellant.

UNPUBLISHED
May 12, 2005

No. 253817
Genesee Circuit Court
LC No. 02-074161-CL

Before: O'Connell, P.J., and Markey and Talbot, JJ.

PER CURIAM.

Plaintiff commenced this employment discrimination action, alleging that she was discharged from her position as director of defendant's salon operations after the birth of her third child, contrary to the Michigan Civil Rights Act, MCL 37.2101 *et seq*., and the Persons with Disabilities Civil Rights Act (PWDCRA), MCL 37.1101 *et seq*. Defendant appeals by leave granted from the trial court's order denying its motion for summary disposition. We reverse.

We review de novo a trial court's decision to grant summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). Defendant moved for summary disposition under MCR 2.116(C)(10). "A motion for summary disposition pursuant to MCR 2.116 (C)(10) tests the factual support of a claim," and it "should be granted if the evidence demonstrates that no genuine issue of material fact exists, and that the moving party is entitled to judgment as a matter of law." *MacDonald v PKT, Inc*, 464 Mich 322, 332; 628 NW2d 33 (2001).

Plaintiff was employed by defendant as one of two Michigan regional directors. As part of a business reorganization after bankruptcy, defendant's owner and chief executive officer, Brian Luborsky, decided to eliminate one of the regional director positions. Although plaintiff alleged that she was discharged because she recently gave birth to her third child, Luborsky claimed that he decided to discharge plaintiff and retain the other regional director based on the other director's superior performance.

But plaintiff relies on a conversation she had with Denise Drewno, defendant's vice president, who told plaintiff, "Mary, I think due to your current situation, with your third child, this would be a blessing in disguise for you." Plaintiff also claimed that Drewno did not believe

that plaintiff could do "what this group is going to need" in light of her "current situation" with three children.

However, according to both Luborsky and Drewno, the decision to eliminate one of the regional director positions and to discharge plaintiff was made by Luborsky alone, and Luborsky said that he made it solely on the basis of the sales and profit declines of both directors. It is undisputed that plaintiff's former position was not filled, and that plaintiff's job performance during the year before she was discharged was not as good as that of the other regional director. Under the circumstances, plaintiff's reliance on Drewno's remarks is insufficient to establish a prima facie case of discrimination. *Sniecinski v Blue Cross & Blue Shield of Michigan*, 469 Mich 124, 134; 666 NW2d 186 (2003). The remarks were made after the decision to eliminate plaintiff's position had already been made, and Drewno explained that she made the remarks in a vain and misguided effort to comfort plaintiff. There is no evidence, apart from plaintiff's subjective belief, that Drewno had any input into the employment decision. Therefore, Drewno's remarks cannot be considered competent evidence that plaintiff's family status was a factor in the adverse employment action. See *Krohn v Sedgwick James, Inc*, 244 Mich App 289, 298, 304; 624 212 (2001). Under these circumstances, plaintiff failed to present any competent evidence that counters defendant's evidence that it discharged plaintiff for a legitimate nondiscriminatory reason, and the trial court erred in denying defendant's motion for summary disposition. See *Sniecinski*, *supra* at 134-135, 140.

Reversed.

/s/ Peter D. O'Connell
/s/ Jane E. Markey
/s/ Michael J. Talbot